

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIONS,
RESTITUTION, CIVIL PENALTIES, AND OTHER COURT ORDERS**

pursuant to Chapter 407, RSMo 2010.¹

2. Defendant Ronald Spielman is an individual that resides at 3240 North Lake Shore Drive, Apartment 5D, Chicago, Illinois and has done business in Jefferson City, Missouri as St. Clair Corporation.

3. Any acts, practices, methods, uses, solicitations, or conduct of the Defendant alleged in this petition include the acts, practices, methods, uses, solicitations, or conduct of Defendant's employees, agents, or other representatives acting under their direction, control, or authority.

JURISDICTION

4. This Court has subject matter jurisdiction over this action under Art. V, § 14 Mo. Const. and § 407.010 et. seq., which allows the Attorney General to seek injunctive relief and civil penalties for violations of § 407.020.

VENUE

5. Venue is proper in this Court pursuant to § 407.100.7, which provides that "[a]ny action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of

¹ All references are to Missouri Revised Statutes 2010, unless otherwise noted. Where a citation gives a supplement year—*e.g.* "(Supp. 2011)"—the citation is to the version of the statute that appears in the corresponding supplementary version of the Missouri Revised Statutes, and, where relevant, to identical versions published in previous supplements.

business.”

6. Defendant has advertised, marketed, and offered for sale window and door goods and services in Jefferson City, Missouri, and has engaged in the acts, practices, methods, uses, and conduct described below in violation of § 407.020 in Jefferson City, Cole County, Missouri, among other Missouri locations.

MERCHANDISING PRACTICES ACT

7. Section 407.020 of the Merchandising Practices Act provides in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice.... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

8. “Person” is defined as “any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.”

§ 407.010(5).

9. “Merchandise” is defined as “any objects, wares, goods, commodities, intangibles, real estate, or services.” § 407.010(4).

10. “Sale” is defined as “any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit.” § 407.010(6).

11. “Trade” or “commerce” is defined as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms ‘trade’ and ‘commerce’ include any trade or commerce directly or indirectly affecting the people of this state.” § 407.010(7).

12. Defendant has advertised merchandise in trade or commerce within the meaning of § 407.010.

13. Pursuant to authority granted in § 407.145, the Attorney General has promulgated rules explaining and defining terms utilized in §§ 407.010 to 407.145 of the Merchandising Practices Act. Said rules are contained in the Missouri Code of State Regulations (CSR). The rules relevant to Plaintiff’s Merchandising Practices Act allegations include, but are not limited to, the provisions of 15 CSR 60-3.010 to 15 CSR 60-14.040. These rules are adopted and incorporated by reference.

ALLEGATIONS OF FACTS RELEVANT TO ALL COUNTS

14. From at least March 2013, until October 2013, Defendant sold windows and doors as well as installation services to Missouri consumers.

15. Defendant contracted with consumers to purchase and install windows in exchange for an upfront payment.

16. After promising consumers windows of certain specifications, those windows were not provided.

17. Defendant accepted at least \$9,000 from at least two consumers for goods and services not provided as promised.

18. As of the date of this petition, Defendant has not provided the goods or services nor refunded the consumers.

Consumer Example

19. Harold Faughn purchased ten windows with installation services from Defendant on or about March 18, 2013.

20. The windows purchased were triple pane with gas injected in between the window panes.

21. The windows were installed on or about May 8, 2013.

22. All of the windows installed were double pane windows rather than triple pane windows.

23. Seven of the ten windows are leaking gas.

24. After numerous attempts to fix the problem and multiple

promises that the windows will be fixed, Mr. Faughn has received no new windows or repair services.

25. As of the date of this petition, Faughn has not received a refund from Defendant.

VIOLATIONS

COUNT I- FALSE PROMISE

26. Plaintiff incorporates all allegations stated above.

27. Defendant engaged in conduct that violates § 407.020 by falsely promising that he will provide windows to consumers as specified at the time of contracting, which was false or misleading as to Defendant's intentions or ability to perform the promise or the likelihood the promise would be performed.

COUNT II - DECEPTION

28. Plaintiff incorporates all allegations stated above.

29. Defendant engaged in methods, acts, uses and practices of deception in connection with the sale of construction, remodeling and roofing services, in violation of § 407.020 by using the method, act, use, practice, advertisement or solicitation to consumers that construction and home remodeling services contracted would be provided according to the terms of the agreement, which had the tendency or capacity to mislead, deceive or cheat, or that tended to create a false impression.

RELIEF

WHEREFORE, Plaintiff prays this Court enter judgment:

- A. Finding that the Defendant has violated the provisions of § 407.020.
- B. Issuing a preliminary and permanent injunction pursuant to § 407.100 prohibiting and enjoining Defendant and his agents, servants, employees, representatives, and other individuals acting at his direction or on his behalf from:
 - i. Owning, managing, operating, performing, offering, advertising, soliciting, or selling any home remodeling, home repair or construction services in the State of Missouri, except to the extent necessary to complete work already paid for by Missouri homeowners;
 - ii. Expending or otherwise disposing of any funds that Defendant received from Missouri homeowners as initial, up-front, or down payments for work that has not yet been completed.
- C. Requiring Defendant pursuant to § 407.100.4 to provide full restitution to all consumers from whom Defendant has received monies and who have been aggrieved by the use of any of the unlawful, unfair or deceptive acts and practices alleged herein.

D. Requiring Defendant pursuant to § 407.100.6 to pay to the State a civil penalty in such amounts as allowed by law per violation of Chapter 407 that the Court finds to have occurred.

E. Requiring Defendant pursuant to § 407.140.3 to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against Defendant, or such other amount as the Court deems fair and equitable.

F. Requiring Defendant pursuant to § 407.130 to pay all court, investigative, and prosecution costs of this case.

G. Granting any additional relief that the Court deems proper in the premise.

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ Melissa Cullmann
Melissa Cullmann, MO Bar #65860
Assistant Attorney General
P.O. Box 899
Jefferson City, MO 65102
(573) 751-3376; Fax (573) 751-2041
Melissa.Cullmann@ago.mo.gov

ATTORNEYS FOR PLAINTIFF